Muhammad Redzuan bin Omar v Timbalan Menteri Dalam Negeri, Malaysia & Anor

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05(HC)-73–04 OF 2021(B)
ABANG ISKANDAR CJ (SABAH AND SARAWAK), ZABARIAH MOHD AND HASNAH HASHIM FCJJ
18 APRIL 2022

Criminal Procedure — Habeas corpus — Application for — Minister ordered appellant to be detained for two years under s 6(1) of Dangerous Drugs (Special Preventive Measures) Act 1985 ('Act') — Appellant applied for writ of habeas corpus on ground that there was failure to observe provisions of Act — Whether detention order issued was ex facie irregular by reason it did not fulfil the requirements of art 149 of Federal Constitution and did not follow decision of Federal Court in Selva Vinayagam a/l Sures v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2021] 1 MLJ 601 — Whether there was delay by police investigating officer and inquiry officer — Whether request for recorded statement by inquiry officer from Minister/Deputy Minister could be rejected by Ketua Setiausaha Bahagian Keselamatan, Kementerian Dalam Negeri — Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3, 5, 6

A detention order was issued by the Deputy Minister of Home Affairs ('the Deputy Minister') against the appellant under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'), ordering that the appellant be detained at Pusat Pemulihan Akhlak Machang, Kelantan for two years with effect from the date of the detention order. The appellant applied to the High Court for a writ of habeas corpus to be issued for his release. The learned judicial commissioner dismissed the appellant's application for a writ of habeas corpus on the ground that there was no procedural impropriety in the detention of the appellant to warrant the grant of a writ of habeas corpus. Aggrieved by the decision of the High Court, the appellant filed this appeal. The issues for consideration were: (a) whether the detention order issued was ex facie irregular by reason it did not fulfil the requirements of art 149 of the Federal Constitution and did not follow the decision of the Federal Court in *Selva Vinayagam a/l Sures v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2021] 1 MLJ 601 (*Selva Vinayagam*); (b) whether there was delay by the police investigating officer and the inquiry officer; and (c) whether the request for the recorded statement by the inquiry officer from the Minister/Deputy Minister could be rejected by the Ketua Setiausaha Bahagian Keselamatan, Kementerian Dalam Negeri.

Held, dismissing the appeal:

(1) The most obvious distinguishing fact in this appeal from *Selva Vinayagam* was that in this appeal there were expressed statements that the appellant was not acting alone. *Selva Vinayagam*, however, was devoid of any facts stating that he was acting in association with a substantial body of persons. The three ingredients as laid out in *Selva Vinayagam* had been fulfilled. The appellant had carried out the illegal activity, namely, the trafficking of dangerous drugs in association with a substantial body of persons. Secondly, the appellant was a member of a substantial body of persons. Thirdly and most importantly, the Minister was satisfied that it was necessary in the interest of public order that the appellant be subjected to preventive detention. There was clear evidence that the appellant was not acting alone in the illegal activity of drug trafficking as averred in the affidavits (see paras 30 & 32–33).

(2) In construing what was the time period to be applied in s 3(3) of the Act, the court ought not to restrict its attention only to the said section, but to consider other provisions of the Act, namely s 3(2) of the Act as it related specifically to time period of detention. The terms of ss 3 and 5 of the Act were crystal clear. So long as the submissions of the required reports were made within the prescribed 60-day period of the detention order, there was no procedural non-compliance. The respondent had explained through the affidavits that the procedures as prescribed had been complied with and that there was no delay. The total period of 35 days taken to conduct the investigation, inquiry and submission of the report to the Minister was within the prescribed period of 60 days. The respondent gave credible reasons for the period taken to conduct the investigation and inquiry (see paras 57–58 & 61).

(3) There was no requirement under the Act for recorded statements as alleged by the appellant. The arguments canvassed by the appellant was clearly not within the ambit of the term 'procedural non-compliance.' Furthermore, there was no provision in the Act itself requiring the investigating officer to take any statement from the appellant. Therefore, the court was satisfied with the explanation given in the affidavit that no written recorded statement was taken (see paras 63–64 & 66).

[Bahasa Malaysia summary

Perintah tahanan telah dikeluarkan oleh Timbalan Menteri Dalam Negeri ('Timbalan Menteri') terhadap perayu di bawah s 6(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas 1985 ('Akta')), memerintahkan perayu ditahan di Pusat Pemulihan Akhlak Machang, Kelantan selama dua tahun berkuat kuasa dari tarikh perintah tahanan. Perayu memohon kepada Mahkamah Tinggi agar writ habeas corpus dikeluarkan untuk pembebasannya. Pesuruhjaya kehakiman yang bijaksana menolak permohonan perayu untuk mendapatkan writ habeas corpus atas alasan bahawa tiada ketidakwajaran prosedur dalam tahanan perayu untuk menjamin

A pemberian writ habeas corpus. Terkilan dengan keputusan Mahkamah Tinggi, perayu memfailkan rayuan ini. Isu-isu untuk pertimbangan adalah: (a) sama ada perintah tahanan yang dikeluarkan adalah ex facie tidak teratur dengan sebab ia tidak memenuhi keperluan perkara 149 Perlembagaan Persekutuan dan tidak mengikut keputusan Mahkamah Persekutuan dalam *Selva*
B *Vinayagam a/l Sures v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2021] 1 MLJ 601 (*Selva Vinayagam*); (b) sama ada berlaku kelewatan oleh pegawai penyiasat polis dan pegawai siasatan; dan (c) sama ada permintaan untuk kenyataan direkodkan oleh pegawai siasatan daripada Menteri/Timbalan
C Menteri boleh ditolak oleh Ketua Setiausaha Bahagian Keselamatan, Kementerian Dalam Negeri.

Diputuskan, menolak rayuan:

(1) Fakta membezakan yang paling jelas dalam rayuan ini daripada *Selva*
D *Vinayagam* adalah dalam rayuan ini terdapat kenyataan yang dinyatakan bahawa perayu tidak bertindak bersendirian. *Selva Vinayagam*, bagaimanapun, tidak mempunyai sebarang fakta yang menyatakan bahawa dia bertindak bersama sejumlah besar orang. Tiga syarat seperti yang dibentangkan dalam *Selva Vinayagam* telah dipenuhi. Perayu telah
E menjalankan aktiviti yang menyalahi undang-undang itu, iaitu pengedaran dadah berbahaya bersama-sama dengan sejumlah besar orang. Kedua, perayu adalah ahli sejumlah besar orang. Ketiga dan yang paling penting, Menteri berpuas hati bahawa adalah perlu demi kepentingan ketenteraman awam bahawa perayu dikenakan tahanan
F pencegahan. Terdapat bukti jelas bahawa perayu tidak bertindak bersendirian dalam aktiviti haram pengedaran dadah seperti yang dinyatakan dalam afidavit (lihat perenggan 30 & 32–33).

(2) Dalam menafsirkan apakah tempoh masa yang akan digunakan dalam
G s 3(3) Akta, mahkamah tidak seharusnya mengehadkan perhatiannya hanya kepada seksyen tersebut, tetapi mempertimbangkan peruntukan lain Akta tersebut, iaitu s 3(2) Akta kerana ia berkaitan khusus dengan tempoh masa tahanan. Terma ss 3 dan 5 Akta adalah jelas. Selagi penyerahan laporan yang diperlukan dibuat dalam tempoh 60 hari yang
H ditetapkan perintah tahanan, tiada ketidakpatuhan prosedur. Responden telah menjelaskan melalui afidavit bahawa prosedur seperti yang ditetapkan telah dipatuhi dan tiada kelewatan. Jumlah tempoh 35 hari yang diambil untuk menjalankan penyiasatan, siasatan dan penyerahan laporan kepada Menteri adalah dalam tempoh 60 hari yang ditetapkan.
I Responden memberikan alasan yang boleh dipercayai untuk tempoh yang diambil untuk menjalankan penyiasatan dan siasatan (lihat perenggan 57–58 & 61).

(3) Tiada keperluan di bawah Akta untuk kenyataan direkodkan seperti yang didakwa oleh perayu. Hujah-hujah yang dikemukakan oleh perayu jelas

bukan dalam lingkungan istilah 'ketidakpatuhan prosedur.' Tambahan pula, tiada peruntukan dalam Akta itu sendiri yang memerlukan pegawai penyiasat mengambil sebarang kenyataan daripada perayu. Oleh itu, mahkamah berpuas hati dengan penjelasan yang diberikan dalam afidavit bahawa tiada kenyataan bertulis yang direkodkan diambil (lihat perenggan 63–64 & 66).]

Cases referred to

Chua Kian Voon v Menteri Dalam Negeri Malaysia & Ors [2020] 1 MLJ 351; [2020] 1 CLJ 747, FC (refd)

L Rajanderan a/l R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2018] supp MLJ 393; [2010] 7 CLJ 653, FC (refd)

Lee Kew Sang v Timbalan Menteri Dalam Negeri & Ors [2005] MLJU 667; [2005] 3 CLJ 914, FC (refd)

Lock Wee Kock v Menteri Hal Ehwal Dalam Negeri & Anor [1993] 3 MLJ 691; [1993] 4 CLJ 211, SC (refd)

Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997, HL (refd)

Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors [1976] 2 MLJ 83; [1976] 1 LNS 126 (refd)

Selva Vinayagam a/l Sures v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2021] 1 MLJ 601; [2021] 2 CLJ 29, FC (distd)

Tamilarasan a/l Subramaniam v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2021] 6 MLJ 147; [2021] 10 CLJ 163, FC (refd)

Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Liau Nyun Fui [1991] 1 MLJ 350; [1991] 1 CLJ Rep 458, SC (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) rr 3(1), 3(6), Form 1

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3 , 3(1), (2), (3), 4, 5, 5(1), (2), (4), 6, 6(1), 9(2), 11C, 22

Federal Constitution art 149

Interpretation Acts 1948 and 1967 ss 15, 54, 54(2)

Appeal from: *Muhammad Redzuan bin Omar lwn Timbalan Menteri Dalam Negeri, Malaysia dan satu lagi* [2021] MLJU 620 (High Court, Shah Alam)

Ikram bin Ibrahim (with Izwan Ariff bin Ibrahim and Althea Suraya bt Rahmat) (Ashraff Al-Hirzan & Assoc) for the appellant.

Muhammad bin Sinti (with Fara Ezlin bt Yusof Khan) (Senior Federal Counsel, Ministry of Home Affairs) for the respondent.

Hasnah Hashim FCJ:

[1] A detention order dated 27 August 2020 was issued by the Deputy Minister of Home Affairs ('the Deputy Minister') against the appellant under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'), ordering that the appellant be detained at Pusat Pemulihan Akhlak Machang, Kelantan for two years with effect from the date of the detention order.

[2] The appellant applied to the High Court for a writ of habeas corpus to be issued for his release. This appeal emanated from the decision of the learned judicial commissioner (JC) made on 16 April 2021 who dismissed the appellant's application for a writ of habeas corpus on the ground that there was no procedural impropriety in the detention of the appellant to warrant the grant of a writ of habeas corpus. Aggrieved by the decision of the High Court the appellant filed this appeal, which was before us. After hearing submissions from parties, both written and oral, we, the majority dismissed the appeal. We herein state our reasons for having so decided.

THE ARGUMENTS

[3] The appellant challenged the detention order on the grounds that there was a failure to observe the provisions of the Act. Before us learned counsel for the appellant, Encik Ikram Ibrahim advanced the following grounds in support of the appeal that the detention of the appellant is illegal:

(a) the detention order issued is ex facie irregular by reason it did not fulfill the requirements of art 149 of the Federal Constitution and did not follow strictly the decision of the Federal Court in *Selva Vinayagam a/l Sures v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2021] 1 MLJ 601; [2021] 2 CLJ 29;

(b) the *delay of 18 days* by the police investigating officer ('the IO') in completing and submitting the investigation report ('the investigation report') under s 3(3) of the Act to the Deputy Minister with convenient speed prejudiced the appellant as it did not follow the principle enunciated by the Federal Court in *Chua Kian Voon v Menteri Dalam Negeri Malaysia & Ors* [2020] 1 MLJ 351; [2020] 1 CLJ 747;

(c) the *delay of 17 days* by the inquiry officer after receiving the completed report by the IO to conduct the inquiry with convenient speed is unreasonable as it did not follow the principles enunciated in *Chua Kian Voon*; and

(d) the letter requesting for the recorded statement which was addressed to the Minister and/or the Deputy Minister cannot be rejected by the

Bahagian Keselamatan, Kementerian Dalam Negeri without first referring to the Minister and/or the Deputy Minister. A

[4] In respect of the validity of the detention order and the infringement of art 149 of the Federal Constitution, learned counsel for the appellant applied the principle enunciated in *Selva Vinayagam* and argues that a detention order issued under preventive detention laws must possess the three elements: B

(a) the activity which has been taken or is being threatened by a substantial body of persons;

(b) the detenu is a member of a substantial body of persons; and C

(c) the Minister is satisfied that it is necessary in the interest of public order that the detenu be subject to preventive detention.

[5] Learned counsel for the appellant further submits that the detention order issued by the Deputy Minister is flawed as it does not have the three elements as suggested by the Federal Court in *Selva Vinayagam* in particular, the failure to expressly state that the appellant was involved in drug-related activities in association with a substantial body of persons. D E

[6] It is the submission of the appellant that s 5(4) of the Act imposes a duty on the inquiry officer to submit a report in writing to the Minister at all convenient speed as enunciated by the Federal Court in *Chua Kian Voon*. Under this provision, the Minister is empowered to make regulations prescribing the period for the submission of the report by the inquiry officer. To date, the Minister has not prescribed by rules and/or regulations the definite period for the submission of reports by the inquiry officer. Learned counsel argues that since the Minister has not made any rules/regulations concerning the period the investigation and/or inquiry must commence or be completed, therefore applying the principle enunciated in *Chua Kian Voon*, s 54(2) of the Interpretation Acts 1948 and 1967(Act 388) applies; the failure to submit with convenient speed. F G

[7] Encik Ikram further argues that the failure of the IO and the inquiry officer to commence the investigation and to submit the report with convenient speed tainted the detention order issued against the appellant. H

[8] Another complaint of the appellant is the failure of the respondent to provide the document requested. The appellant had requested a copy of the recorded statement by the inquiry officer from the Minister/Deputy Minister. The request was however rejected by a formal letter from one Puan Nor Jamilah, Ketua Setiausaha Bahagian Keselamatan, Kementerian Dalam Negeri. The reason for the rejection is simply this, there is no record of a I

A recorded written statement being taken thus no such document exists. Learned counsel argues that the written response should have been from the Minister and not the Ketua Setiausaha Bahagian as the appellant's letter was addressed to the Minister.

B **[9]** Relying on his written submission learned senior federal counsel ('SFC') Encik Muhammad Sinti submitting for the respondent, explains that a preamble to an Act states the source of the power of the statute and referred to the case of *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 2 MLJ 83; [1976] 1 LNS 126, affirmed on appeal in 1977, where the court held the general rule as to the effect of a preamble upon the enacting part of a statute. If the meaning of the enactment is unequivocal without the preamble, the preamble can have no effect whatsoever. It is settled law that the preamble cannot restrict the enacting part of a statute though it may be referred to solve an ambiguity.

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D

[10] Learned SFC further argues that the facts of this case can be distinguished from the facts of *Selva Vinayagam*. In this appeal, there was evidence that the appellant was involved in drug-related activities between November 2019 and June 2020 and that he was involved with a group of individuals, local drug traffickers, and not acting alone. These facts are expressly stated in the affidavit in reply of Dato' Sri Dr Hj Ismail, the Deputy Minister of Home Affairs.

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F **[11]** On the issue of delay, learned SFC argues that there was no delay in the investigation as the complete investigation report was submitted within the 60 days as prescribed under s 3(2) of the Act. With regards to the failure to provide the written statement learned SFC pointed out that the IO had explained in her affidavit that she did not record any statement in writing. Hence, there is no written statement in existence that can be given to the appellant.

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[12] The issues stated above require this court to analyse the scope of the relevant provisions of the Act.

H THE LEGISLATIVE FRAMEWORK

[13] It is well established that a strict approach is taken by the court when construing statutory powers of executive detention. The principal question is whether there was a material breach of the provisions of the law which allow preventive detention. If there is, the detention is deemed to be unlawful. It is, therefore, convenient and necessary to reproduce the relevant provisions of the Act which will be referred to and discussed in this judgment.

I

[14] The Act is enacted under art 149 of the Federal Constitution which

provides:

(1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation:

(a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or

(b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or

(c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or

(d) to procure alteration, otherwise than by lawful means, of anything by law established; or

(e) which is prejudicial to the maintenance of the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof: or

(f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,

any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.

[15] The long title and the preamble of the Act state the purpose and objective of the Act:

An Act to provide for *the preventive detention of persons associated with any activity relating to or involving the trafficking in dangerous drugs*.

WHEREAS action which is *prejudicial to public order in Malaysia has been taken and further similar action is being threatened by a substantial body of persons both inside and outside Malaysia*

AND WHEREAS Parliament considers it necessary to stop such action;

NOW, THEREFORE, pursuant to Article 149 of the Constitution *BE IT ENACTED* by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same. (Emphasis added.)

[16] Section 3 of the Act deals with the power to detain suspected persons. Under s 3(1) of the Act any police officer may without warrant arrest and detain any person for the purpose of investigation:

Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are

grounds which could justify his detention under subsection 6(1). (Emphasis added.)

[17] Section 3(2) of the Act further provides that any person arrested and detained under s 3(1) may be detained for a period not exceeding 60 days without an order of detention being made against him under s 6(1) subject to the conditions as stated in the proviso:

(2) Any person arrested and detained under this section may be detained in police custody for *a period not exceeding sixty days* without an order of detention having been made in respect of him under subsection 6(1):

Provided that —

(a) he *shall not be detained for more than twenty-four hours except with the authority of a police officer of or above the rank of Inspector*

(b) he *shall not be detained for more than forty-eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police*

(c) he *shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector General or to a police officer designated by the Inspector General in that behalf and the Inspector General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.* (Emphasis added.)

[18] Under the Act the police officer conducting the investigation pertaining to a person arrested and detained under this section shall cause a copy of the complete report of the investigation to be submitted to the following persons:

(a) to an Inquiry Officer appointed under subsection 5(1); *and*

(b) to the Minister,

within such period *as may be prescribed by the Minister* by regulations made under this Act.

[19] Section 6 of the Act is referred to in s 3. Section 6(1) deals with the power to order detention and restriction of persons:

(1) Whenever the Minister, after considering —

(a) the *complete report of investigation submitted under subsection 3(3) and*

(b) *the report of the Inquiry Officer submitted under subsection 5(4),*

is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a 'detention order') direct that such person be detained for a period not exceeding two years.

[20] The Minister may order the detention of a person only after having considered the complete report of the investigation by the IO submitted under s 3(3) of the Act as well as the report of the inquiry officer submitted under s 5(4) of the same Act, only if he is satisfied that the detention is necessary in the interest of public order that such person is detained.

[21] Section 3(3) of the Act requires the IO to submit the complete investigation report to not only the inquiry officer but also to the Minister. The inquiry officer is required by law to submit a report to the Minister. Section 5 of the Act deals specifically with the appointment of inquiry officers and their duties and function as prescribed under the Act. Section 5 of the Act reads as follows:

> (1) There shall be appointed by the Minister in writing such number of Inquiry Officers as may be necessary for the purposes of this Act:
>
> *Provided that no police officer nor any person who is not legally qualified shall be appointed to be an Inquiry Officer*.
>
> (2) *Upon receiving the report under subsection 3(3), the Inquiry Officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs.*
>
> (3) An Inquiry Officer may, in his discretion, for the purpose of subsection (2) —
>
> (a) require the attendance before him of a person detained under section 3;
>
> (b) procure and receive all such evidence, whether oral or in writing and whether the same be admissible or not under any written law for the time being in force relating to evidence or criminal procedure, which he may think necessary or desirable;
>
> (c) summon and examine witnesses on oath or affirmation, and may for those purposes administer any oath or affirmation;
>
> (d) require the production of any document or other thing in his opinion relevant to the case.
>
> (3A) The Public Prosecutor may appear at any inquiry under the paragraph (3)(c).
>
> (3B) The Minister may prescribe the allowances to be paid to any person or witnesses summoned or required to be present under subsection (3).
>
> (4) *An Inquiry Officer shall submit his report in writing to the Minister* within such period *as may be prescribed* by the Minister by regulations made under this Act. (Emphasis added.)

THE ANALYSIS

[22] Having set out the background to the arguments by the parties, we shall now address the principal issues in this appeal.

Whether the detention order issued is ex facie irregular by reason it did not fulfill the requirements of art 149 of the Federal Constitution and did not follow the decision of the Federal Court in Selva Vinayagam

[23] In *Selva Vinayagam* a detention order was issued pursuant to s 6(1) of the Act by the Deputy Minister of Home Affairs directing that the appellant be detained for two years with effect from 22 November 2018 at the Pusat Pemulihan Akhlak, Simpang Renggam, Johor. The appellant applied to the High Court on 27 May 2019 for a writ of habeas corpus on the ground that the detention order was unlawful. At the High Court, the appellant's sole ground of complaint was that the respondent failed and/or refused to produce the appellant's statement recorded by the investigating police officer under s 4 of the same Act. This failure and/or refusal to produce the appellant's statement amounted to a substantive procedural non-compliance that justified the writ of habeas corpus to be issued. The learned judge dismissed the appellant's application on the grounds that the IO had conducted the investigation and examination of the appellant as required under the Act. Therefore, the non-production of the appellant's statement did not breach any procedural requirement prescribed under the Act.

[24] Learned counsel for the appellant in *Selva Vinayagam* raised a new issue, that is, the detention order and the grounds and allegations of fact thereunder are ultra vires and the preamble of the Act. The thrust of the appellant's argument in *Selva Vinayagam* is that the grounds of the detention order, the allegations of fact, and the Deputy Minister's affidavit revealed that the appellant was acting alone without any participation from any other persons and did not allege that the appellant's activities were conducted in association with a substantial body of persons.

[25] The preamble to Act expressly provides that it is an Act to stop action which is prejudicial to public order which has been taken or threatened by a substantial body of persons. Section 15 of Act 388 provides that the short title, the long title, and the preamble to the Act should be construed as part of the Act, therefore, the activities of a person acting alone could not be deemed to be within the ambit and scope of scrutiny under the preventive legislations. It was argued that the ambit or scope of the Act is only confined to a substantial body of persons.

[26] The respondent in *Selva Vinayagam*, in response, argued that the preamble to the Act is not relevant to the purposes of construction or considering the scope of the provisions of s 6(1) of the Act as there is no ambiguity whatsoever in the latter and that the appellant's argument was inconsistent with the broad and practical approach that the court had taken to see the scheme of the legislation both under the FC and the Act which is to

prevent actions prejudicial to public order. Further, pursuant to s 11C of the Act, the detention order may only be challenged on grounds of non-compliance with any procedural requirement, and nothing else.

[27] The arguments advanced in *Selva Vinayagam* was the failure of the Deputy Minister to expressly state whether the appellant had carried out the activities on his own or in association with 'a substantial body of persons'. The detention is only justified and lawful only if the appellant has acted in concert or in association with a substantial body of persons. The basis of the appellant's principal argument in *Selva Vinayagam* is the absence of any evidence of the involvement of the appellant with a substantial body of persons. There was no allegation that the appellant's activities were being carried out in the detention order or averred in the affidavits.

[28] Justice Vernon Ong explained with great clarity in his grounds of judgment the purpose and objective of art 149 of the Federal Constitution and the safeguards:

> The material provisions of the law authorising preventive detention must be strictly construed and safeguards that the law provides for the protection of any citizen must be liberally interpreted.
>
> [33] The purpose of art 149 is to enable Parliament, once any one or more of the six categories of action enumerated under paras (a) to (f) of cl (1) has occurred, to make laws providing not only for its suppression but also for preventing its recurrence. Where such an Act of Parliament confers on the Executive to act in a manner inconsistent with arts 5, 9, 10 or 13, the action must be taken bona fide for the purpose of stopping or preventing action of the kind envisaged under the Act (see *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50 at p 54; [1978] 1 LNS 202 (PC)).
>
> [34] Where power is vested in a statutory authority to deprive the liberty of a person on its subjective satisfaction with reference to the specified matters, and if that satisfaction is stated to be based on a number of grounds or for a variety of reasons all taken together, and if some out of them are found to be non-existent or irrelevant, the very exercise of that power is bad. Therefore, strict compliance with the letter of the rule of law is the essence of the matter.
>
> [35] In this instance, the long title to Act 316 declares that (i) the object of Act 316 is to provide for the preventive detention of persons involved in illicit drug trafficking activities; and (ii) Parliament considers it necessary to stop such activities prejudicial to public order which has been taken or is being threatened by a 'substantial body of persons'.

[29] His Lordship further elucidated that:

> [46] In the light of ss 15 and 17A of the Interpretation Acts, we are of the view that the purpose and object of Act 316 should be read into s 6(1) in order to give it the meaning intended by Parliament when it enacted Act 316 under the authority of

art 149 of the FC. This is particularly important as art 149 which provides for special powers against subversion, etc gave justification for substantial restrictions on fundamental liberties even under normal circumstances (ie to say, other than during an emergency). We say so for two reasons. To construe s 6(1) without reading into it the purpose of the Act would be (i) to render the declared purpose and object which is spelt out in the long title and preamble as mere verbiage; and (ii) to render otiose the provisions of ss 15 and 17A of the Interpretation Acts.

[47] For the foregoing reasons, we think that the respondent's argument that the long title and preamble is not relevant for the purposes of interpreting s 6(1) is incongruous. It is clear that the power under s 6(1) may only be exercised if the following three key ingredients are set out in the grounds of the detention order and allegations of fact. One, that the activity which has been taken or is being threatened by a substantial body of persons relates to or involves the trafficking in dangerous drugs. Two, that the detenu is a member of a substantial body of persons. Three, that the Minister is satisfied that it is necessary in the interest of public order that the detenu be subject to preventive detention.

[48] It also goes without saying that the courts must be vigilant in individual cases to ensure that the executive acts within the law and does not encroach unnecessarily into the fundamental liberties of the person. We have scrutinised the grounds of the detention order, the allegations of fact and the Deputy Minister's affidavit.

[30] We agree with the rationale in *Selva Vinayagam*. However, having regard to the issues argued before us it is opportune to distinguish *Selva Vinayagam* and this appeal on the facts and the law. Careful scrutiny of the facts and the documentary evidence of this appeal shows that it is distinguishable from *Selva Vinayagam*. The most obvious distinguishing fact is that in this appeal there are expressed statements that the appellant was not acting alone. This is reflected in para 22 of the affidavit in reply of the Deputy Minister:

> Saya sesungguhnya menyatakan bahawa berdasarkan hasil siasatan yang dilaporkan melalui laporan di bawah seksyen 3(3) dan seksyen 5(4) Akta tersebut, *saya berpuas hati bahawa Pemohon tidak menjalankan aktiviti pengedaran dadah berbahaya secara berseorangan. Kegiatan Pemohon dalam menerima, menyimpan, menghantar, membawa, menjual dan berusaha untuk mendapatkan bekalan dadah jenis Syabu yang mengandungi dadah berbahaya jenis Methamphetamine, dadah jenis Pil Ectasy yang mengandungi dadah berbahaya jenis 3, 4- Methylenedioxymethamphetamine (MDMA) dan dadah jenis Pil Erimin 5 yang mengandungi dadah berbahaya jenis Nimetazepam bagi tujuan pengedaran kepada pelanggan-pelanggan Pemohon serta memberi upah kepada pembantu Pemohon bagi melaksanakan penghantaran dadah berbahaya tersebut jelas membuktikan bahawa Pemohon tidak bertindak secara berseorangan dalam melakukan aktiviti pengedaran dadah berbahaya.* Penglibatan Pemohon telah memudaratkan ketenteraman awam dan tindakan di bawah Akta tersebut perlu diambil oleh Pemohon. (Emphasis added.)

[31] The Deputy Minister in the statement of facts in this appeal had stated the following:

PENGATAAN-PENGATAAN FAKTA YANG ATASNYA PERINTAH ITU DIASASKAN

1. Bahawa kamu didapati terlibat dengan aktiviti pengedaran dadah jenis Syabu yang mengandungi dadah berbahaya jenis Methamphetamine, dadah jenis Pil Ectasy yang mengandungi dadah berbahaya jenis 3, 4-Methylenedioxymethamphetamine (MDMA) dan dadah jenis Pil Erimin 5 yang mengandungi dadah berbahaya jenis Nimetazepam pada bulan November 2019 sehingga bulan Jun 2020 secara tidak berterusan dari Jeti Nelayan Sungai Balang, Parit Jawa, Muar, Johor ke *sempadan perairan antarabangsa Malaysia/Indonesia.*

2. Bahawa kamu didapati menyimpan dan menghantar bekalan dadah jenis Syabu yang mengandungi dadah berbahaya jenis Methamphetamine sebanyak 5 kilogram hingga 30 kilogram, dadah jenis Pil Ectasy yang mengandungi dadah berbahaya jenis 3, 4-Methylenedioxymethamphetamine (MDMA) sebanyak 50 biji pil dan dadah jenis Pil Erimin 5 yang mengandungi dadah berbahaya jenis Nimetazepam sebanyak 10,000.00 biji pil dengan *menerima upah sebanyak antara RM2,000.00 sehingga RM22,000.00 bagi setiap transaksi.*

3. Bahawa kamu didapati menerima bekalan dadah jenis Syabu yang mengandungi dadah berbahaya jenis Methamphetamine sebanyak 5 kilogram hingga 30 kilogram, dadah jenis Pil Ectasy yang mengandungi dadah berbahaya jenis 3,4-Methylenedioxymethamphetamine (MDMA) sebanyak 50 biji pil dan dadah jenis Pil Erimin 5 yang mengandungi dadah berbahaya jenis Nimetazepam sebanyak 10,000.00 biji pil daripada pengedar dadah tempatan bagi tujuan pengedaran.

4. Bahawa kamu didapati memberi upah kepada pembantu sebanyak RM1,000.00 hingga RM22,000.00 mengikut kuantiti dadah yang dibawa selepas penghantaran berjaya dilakukan.

5. Bahawa kamu didapati menjual dadah jenis Syabu yang mengandungi dadah berbahaya jenis Methamphetamine dalam bentuk peket (anggaran berat 1.0 gram hingga 2.5 gram sepeket) berharga RM130.00 hingga RM250.00 sepeket.

[32] The statement of facts in *Selva Vinayagam*, however, is devoid of any facts stating that he was acting in association with a substantial body of persons:

PENGATAAN-PENGATAAN FAKTA YANG ATASNYA PERINTAH ITU DIASASKAN

1. Bahawa kamu didapati terlibat dengan aktiviti pengedaran dadah berbahaya jenis Heroin sejak bulan Disember 2017 hingga bulan Julai 2018 secara tidak berterusan di sekitar kawasan stesen minyak BHP, Segambut, Kuala Lumpur, di sekitar kawasan Jinjang, Kuala Lumpur, di sekitar RHB Bank, Segambut, Kuala Lumpur dan di sekitar kawasan Segambut, Kuala Lumpur.

2. Bahawa kamu didapati menjual dadah berbahaya jenis Heroin dalam bentuk peket (anggaran berat 2 gram) berharga RM50.00 sepeket.

[33] In this appeal, the three ingredients as laid out by Justice Vernon Ong in *Selva Vinayagam* have been fulfilled. The appellant had carried out the illegal activity, namely, the trafficking of dangerous drugs in association with a substantial body of persons. Secondly, the appellant is a member of a substantial body of persons. Thirdly and most importantly, the Minister is satisfied that it is necessary in the interest of public order that the appellant be subject to preventive detention. On the facts in this appeal, there is clear evidence that the appellant was not acting alone in the illegal activity of drug trafficking as averred in the affidavits.

[34] Hence, to apply the rationale enunciated in *Selva Vinayagam* to determine whether the procedures have been complied with by the authorities, the courts must examine the affidavits and the statement of facts with great scrutiny which will reveal whether the appellant was acting alone or in association with a substantial body of persons.

DELAY BY THE IO AND THE INQUIRY OFFICER

[35] The Act allows police officers to arrest and detain any person for *a period not exceeding 60 days* without an order of detention having been made in respect of him for the purposes of investigation. On the issue of the 18 days delay by the IO and the delay of 17 days by the inquiry officer, we find it necessary to discuss the case of *Chua Kian Voon*. The appellant in *Chua Kian Voon* was arrested under s 3(1) of the Act on 21 September 2017. On 1 October 2017, the IO with the assistance of an interpreter recorded a statement from the appellant at the Narcotics Crime Investigation Department, IPD Penampang, Sabah. The complete report of the investigation was then submitted to the Deputy Minister and the inquiry officer.

[36] The Deputy Commissioner of Police, being an officer designated by the Inspector General of Police under the Act received the report on 29 September 2017. This was followed by further detention of the appellant beyond 14 days in accordance with the requirements of s 3(2) of the Act and subsequently, the Deputy Minister received the report on 19 October 2017.

[37] On 25 October 2017, the inquiry officer received the investigation report which contained the written statements recorded from certain witnesses and the appellant. The inquiry officer then conducted a physical examination of the appellant under s 5(2) of the Act.

[38] The inquiry officer, after being satisfied that there were reasonable grounds to believe that the appellant had been or was associated with activities relating to or involving the trafficking of dangerous drugs, submitted the report to the Deputy Minister pursuant to s 5(4) of the Act. After considering both the police investigation report and the inquiry report submitted, the Deputy Minister issued a detention order on 17 November 2017 directing the appellant to be detained for a period of two years at the Pusat Pemulihan Akhlak Simpang Renggam, Johor with immediate effect.

[39] It was the submission of the appellant in *Chua Kian Voon* that the detention order was flawed as there was procedural non-compliance with the provisions of the Act. In particular the following:

(a) the non-compliance with s 9(2) of the Act read together with r 3(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) ('the 1987 Rules');

(b) the non-compliance with r 3(6) of the 1987 Rules; and

(c) the non-compliance with ss 3(3), 4(5) and 5(2) of the Act.

[40] Section 9(2) of the Act and r 3(1) of the 1987 Rules require strict compliance. In *Chua Kian Voon* the failure on the part of Constable Tong Wilson, a Mandarin interpreter, to fill up the column in Form 1 stating the language in which the interpretation was conducted was fatal. The Federal Court held that there was non-compliance with the statutory requirements as provided under those provisions.

[41] In *Chua Kian Voon* this court was confronted with the issue of whether the 21 days delay by the inquiry officer in commencing, conducting an inquiry and submitting the report after receiving the investigation report from the IO tainted the detention order issued. The arguments in *Chua Kian Voon* focused on the application of s 5(2) of the Act and that the 21-day delay by the inquiry officer in holding the inquiry amounted to procedural non-compliance violating the appellant's right to liberty.

[42] The arguments and the analysis in *Chua Kian Voon* were essentially premised on s 5(2) of the Act. This court concluded that the affidavits did not provide any credible reasons for the 21-day delay and in the absence of credible reasons the time taken for the inquiry officer to conduct her inquiry against the appellant was inordinate and not with 'convenient speed':

> [68] As the burden to prove the detention was lawful lies on the detaining authority, whether the report was completed with convenient speed or without inordinate delay remains a matter for the detaining authority ie, the respondents, to establish. It is trite that where there is a delay on the part of the respondents to complete the

report with 'convenient speed', it is incumbent upon the respondents to discharge the burden of proffering a satisfactory explanation for the delay. Thus, as we have alluded to earlier, if there is no explanation given, the court will assume that there are no reasons.

[69] We accordingly examined the evidence on record, particularly the affidavits deposed by the inquiry officer, Nadia bt Mohd Izhar. We found none of her affidavits nor do any other affidavits from the respondents provide any credible reasons for the 21-day delay. The only reasons she gave in paras 7 and 8 of her affidavit in reply dated 13 September 2018 were that she could only conduct physical examination on the appellant because she needed to read the file, examine the documents and the other subjects (witnesses). These, with respect, hardly constitute reasons because they are procedural matters which every other inquiry officer in her place would have to perform. The court cannot simply accede to the inquiry officer's plea of heavy workload as basis for the delay to conduct inquiry against the appellant under s 5(2) of the 1985 Act. If this plea were to be accepted, it would become a source of justification for prolonged and unacceptable delay in conducting the inquiry and this would impair the interest of the appellant.

[70] For the reasons aforementioned and in the absence of credible reasons for the delay, we had no option but to conclude that the 21-day delay in the time taken for the inquiry officer to conduct her inquiry against the appellant was inordinate and not with 'convenient speed'.

[43] It is our observation that unfortunately in *Chua Kian Voon* s 3(2) of the Act was not addressed. A similar observation was made by this court in *Tamilarasan a/l Subramaniam v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2021] 6 MLJ 147; [2021] 10 CLJ 163:

[11] Secondly and more importantly, it does appear from paras 64 to 70 of the judgment and indeed from a reading of the whole judgment that the court's attention was not drawn to s 3(2) of the Act, which allows for the person arrested under s 3(1) to be detained in police custody for up to 60 days pending the decision of the Minister under s 6(1).

[12] That probably explains why there was no discussion by the court in *Chua Kian Voon* on the effect of s 3(2) when dealing with issue (v). Judging from the facts of the case as set out in para 4 of the judgment, it is clear that the inquiry officer had submitted her inquiry report to the Minister within the 60-day detention period allowed by s 3(2). The appellant was arrested on 21 September 2017 under s 3(1) and the inquiry officer submitted her inquiry report to the Minister under s 5(4) on 15 November 2017, six days before the expiry of the appellant's detention period of 60 days under s 3(2).

[44] We agree that s 5(2) of the Act does not prescribe the time frame in which the investigating officer must commence and complete the investigation after the detainee's arrest as well as prescribing the period required for the inquiry officer to commence and complete his inquiry under s 5(2) of the Act after receiving the investigation report from the investigating officer. However,

s 5(2) of the same Act must be read harmoniously with s 3(2), that is, submission of reports by both the IO and the inquiry officer must be submitted within the period of 60 days as prescribed under s 3(2) of the Act as the appellant is detained in police custody without an order of detention having been made in respect of him under s 6(1).

[45] The detention order of the Minister pursuant to s 6 of the Act must be made within the prescribed 60 days as prescribed under s 3(2). Hence, if the number of days taken for investigation, inquiry, and submission of the reports of the IO and the inquiry officer totalled to more than the prescribed 60 days the Minister cannot issue the detention order as a detention order issued beyond the prescribed 60 days for the purposes of investigation and inquiry is illegal.

[46] In respect of s 5(4) of the Act and the delay in submission of the report, s 54(2) of Act 388 was referred to and relied upon by the Federal Court. Section 54(2) of the aforesaid Act provides where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion requires. Section 54 of Act 388 reads:

> (1) In computing time for any written law:
>
> (2) Where *no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed* and as often as the prescribed occasion arises. (Emphasis added.)

[47] For any matter where time has not been prescribed by written law, such matter ought to be completed as soon as practicable and without inordinate delay. However, we find it necessary to emphasise that the provision of s 5(4) of the Act must not be read in isolation from the other provisions in the Act in the determination of non-compliance with the procedure as set out under the Act. Section 3(2) of the Act prescribed the period of detention of 60 days must be taken into consideration in determining the compliance or non-compliance with the procedures as provided under the Act. One cannot and must not turn a blind eye to the existence and the importance of the maximum period of detention without warrant of arrest for the purposes of investigation and inquiry as provided under s 3(2) of the Act in the application of the other provisions of the Act. The provision of s 3(2) of the Act gives the police power to conduct an investigation and inquiry within the prescribed 60 days period.

[48] The term 'convenient speed' is very subjective. The word 'convenient' in the *Oxford English Dictionary* (Vol II C) is defined as 'agreeing, consistent, accordant, fitting, suitable, becoming'; in respect of time, 'due, proper'.

[49] The House of Lords in *Padfield v Minister of Agriculture, Fisheries and*

Food [1968] AC 997 stated that the court must analyse the power by construing the words by which it was conferred on him in their context. From the words in their context Parliament's purpose in conferring the power can be identified and ultimately the purpose and intent will illumine the scope of the provisions of the legislation.

[50] In *Tamilarasan* Abdul Rahman Sebli FCJ succinctly explained in his usual eloquent manner that the correct way to construe and interpret ss 3(3) and 5(4) of the Act:

> [8] In our view, the proper way to construe s 3(3) and s 5(4) is to read them harmoniously with the preceding s 3(2), which allows for the arrested person to be detained in police custody for a period of not more than 60 days after his arrest under s 3(1). In other words, whatever may be the time that the investigating officer may take to complete his investigation and whatever may be the time that the inquiry officer may take to complete his inquiry, they must submit their respective reports to the Minister under ss 3(3) and 5(4) before the expiry of the 60-day detention period allowed by s 3(2). Sections 3(1) and 3(2) are couched in the following language:
>
> (1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subsection 6(1).
>
> (2) Any person arrested and detained under this section may be detained in police custody for *a period not exceeding sixty days* without an order of detention having been made in respect of him under subsection 6(1):
>
> Provided that —
>
> (a) he shall not be detained for more than twenty four hours except with the authority of a police officer of or above the rank of Inspector;
>
> (b) he shall not be detained for more than forty-eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;
>
> (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector General or to a police officer designated by the Inspector General in that behalf and the Inspector General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister. (Emphasis added.)
>
> [19] The provisions of s 3(2) are clear and unambiguous. There is therefore no necessity to lift the legislative veil so to speak to find out what Parliament's intention was in enacting the provision. It means that any person arrested under s 3(1) may be detained in police custody for the purpose of investigation for a period of up to 60 days 'without an order of detention having been made in respect of him under s 6(1) 'provided there was no breach of paras (a), (b), and (c) which is not the case in the

present appeal.' Any period of detention after the expiry of the 60-day detention period without the detention order being issued by the Minister under s 6(1) would be illegal.

[20] Thus, reading ss 3(3) and 5(4) in tandem with s 3(2), the investigating officer and the inquiry officer have 60 days to complete their investigation and inquiry before submitting their reports to the Minister under ss 3(3) and 5(4). There is therefore a timeline within which the reports under ss 3(3) and 5(4) are to be submitted to the Minister, although the Minister has yet to prescribe the period within which the investigating officer and the inquiry officer are to do so in exercise of his power under s 22(2)(d) of the Act.

[21] As to how the investigating officer and the inquiry officer are to utilise the 60 days that they have to carry out the investigation (in the case of the investigating officer) and to carry out the inquiry (in the case of the inquiry officer), that must depend on the facts and exigencies of each case, but between them, they must not take more than 60 days to do so. The Act does not prescribe a step-by-step procedure that they are required to follow in carrying out their investigation and inquiry. That, if at all, is a matter for their respective departments to lay down internally.

[22] After the investigation and inquiry reports have been submitted to the Minister under ss 3(3) and 5(4) by the investigating and inquiry officers, the next procedural requirement is for the Minister to act under s 6(1), which provides as follows:

> 6(1) Wherever the Minister, after considering:
>
> (a) the complete report of investigation submitted under subsection 3(3); and
>
> (b) the report of the inquiry officer submitted under subsection 5(4),
>
> is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of the public order such person be detained, by order (hereinafter referred to as a 'detention order') direct such person be detained for a period not exceeding two years.

[23] For the purpose of exercising his power under s 6(1), the Minister must have both the investigation report by the investigating officer and the inquiry report by the inquiry officer. Obviously these reports must be submitted to him before the expiry of the 60-day detention period under s 3(2), for otherwise, as we said, the continued detention of the arrested person in police custody would be illegal.

[51] We have no reason not to agree with *Tamilarasan* on this issue that is, the Minister must have both the investigation report by the investigating officer and the inquiry report by the inquiry officer before the expiry of the 60-day detention period before the issuance of the detention order. Section 5(4) of the Act must not be read *in vacuo* or in isolation from the other provisions of the Act.

[52] As is clear from the wordings of the provision, s 5(4) of the Act provides that an inquiry officer shall submit his report in writing to the Minister *within such period as may be prescribed by the Minister by regulations made under this Act*. The power of the Minister to enact regulations to carry out the purposes of the Act is under s 22 of the Act. Section 22 provides:

> (1) The Minister may make regulations to carry out the purposes of this Act.
>
> (2) In particular and without prejudice to the generality of subsection (1) such regulations may —
>
> (a) provide for the maintenance and management of places of detention and the discipline and treatment of persons detained therein and different regulations may be made for different places of detention;
>
> (b) prescribe the form of the register, and such other forms as may be necessary or expedient to be used in connection with the matters dealt with in this Act or in any regulations made thereunder;
>
> (c) require all or any class of registered persons to carry identity cards, provide for the form, issue, production, inspection, cancellation, alteration, endorsement and replacement of any such cards, and the substitution thereof for identity cards issued to those persons or to persons of that class under any other written law, and for all other matters necessary or expedient in connection with any such cards or the carrying thereof or the enforcement of any such regulations, including the prescription of penalties not exceeding, in respect of any offence, a fine of five thousand ringgit or imprisonment for a term of three years or both; and
>
> (d) *prescribe anything which may be prescribed under this Act.* (Emphasis added.)

[53] Subsidiary legislation made thereunder cannot be inconsistent with the provision of the parent act. Therefore, regulations made under s 22 of the Act must not be inconsistent with the provisions of the Act. As we have alluded and this point has been emphasised in *Tamilarasan* the provisions of the Act must be read harmoniously. Section 3 of the Act allows the authority to detain a person arrested to be detained under this section in police custody for a period not exceeding 60 days without an order of detention having been made in respect of him. Submission of report by the IO must be made to the inquiry officer within such period as may be prescribed by the Minister by the regulations made under this Act. Any regulation made thereunder must not exceed the prescribed period of 60 days. In other words, the Act has prescribed a time to complete submission and issue the detention order. It follows that in the absence of the regulation the submission of reports must be made before the expiry of the prescribed 60 days. It is fundamentally wrong to interpret that since the Act did not prescribe a time within which the submission of reports and the investigation and inquiry were not conducted with convenient speed,

the detention order issued by the Minister is tainted and illegal. A

[54] NS Bindra in *Interpretation of Statutes* (8th Ed) at p 487 explicitly explained the rule of construction of statutes:

> It is a recognised rule of construction that the words of the statutes, when there is doubt about their meaning, are to be understood in the sense in which they best harmonize with the subject of the enactment and the object of the Legislature has in view. If there is any ambiguity in the use of the word, it has to be resolved in the light of the enactment. If there were any doubt or ambiguity as to the correct interpretation of the provisions of a statute, and the court is dealing with benevolent legislation, the court ought to interpret the Act so as to prevent the mischief and to promote the remedy. B C
>
> The fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely that the court will have to find out the expressed intention from the words used in the Constitution or the Act, as the case may be. If, however, two constructions are possible, then the court must adopt that which will ensure smooth and harmonious working of the Constitution or the Act and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established principles of law nugatory. The attempt should be to harmonise the provisions of the enactment. But the provisions of one section in the Act cannot be used to defeat the provisions of another in the section in the same Act unless reconciliation is impossible. It is a settled principle of interpretation that in case of doubt the leaning must be in favour of the subject and one should harmoniously construe the provisions of the statute as to avoid impairing obligations and to advance the object of the Act. D E F

[55] Even assuming that the Minister makes regulations as provided under the Act in so far as it relates to the submission of the reports of the IO and inquiry officer, the total number of days to complete all investigations and inquiries must be within the 60 days period allowed by s 3(2) of the Act. In reality, IOs and inquiry officers normally have more than one detainee to investigate and to conduct inquiry, at any one point of time. As long as the investigation and the submission of the reports by the IO and the inquiry officer is within the prescribed 60 days of detention, the detention order cannot be said to be illegal. G H

[56] In determining the issue before us, we considered not merely the words of the Act, but also the intent of the legislature. Every statute must be construed *ex vigoenibus actus* or *ex visceribus actus*, that is, provisions of a statute must be construed and interpreted within the four corners of the Act. The court must consider other parts of the statute which will throw light on the intention of the legislature. Hence, a provision ought not to be construed as it stood alone but is interdependent with the other provisions of the statute. I

[57] Applying the aforesaid principle of interpretation in reading statutes, in construing what is the time period to be applied in s 3(3) of the Act, the court ought not to restrict its attention only to the said section, but to consider other provisions of the Act, namely s 3(2) as it relates specifically to time period of detention. This is the section which throws light on the intention of the Legislature and serve to show that s 3(3) ought not to be construed standing alone without due regard to the rest of the Act.

[58] It is our view that the terms of ss 3 and 5 are crystal clear. So long as the submissions of the required reports are made within the prescribed 60-day period of the detention order, there is no procedural non-compliance. It is not for the courts to determine whether the investigation period and/or inquiry period have been conducted with convenient speed. The time period taken to conduct investigation and inquiry is very subjective and depends on each individual case. One case may take longer or lesser than another, so long as the total number of days taken does not exceed the prescribed 60 days period. This is precisely why the Minister could not prescribe a fixed period for each stage of investigation or inquiry period to be completed.

[59] This is explained and elaborated in *Lock Wee Kock v Menteri Hal Ehwal Dalam Negeri & Anor* [1993] 3 MLJ 691; [1993] 4 CLJ 211. The facts of the Supreme Court case of *Lock Wee Kock* are almost similar to the present case before us. The appellant, Lock Wee Kock was arrested and detained by the police under s 3(1) of the Act. On the 57th day of his arrest, the Deputy Minister of Home Affairs issued a detention order under s 6(1) of the Act for the appellant to be detained for two years at the Pusat Pemulihan Akhlak, Pulau Jerejak. An application for habeas corpus for the release of the appellant was made to the High Court. The High Court dismissed the application. Aggrieved with the decision of the High Court the appellant appealed to the Supreme Court. It was argued on appeal that it was mandatory for the Minister to fix the time period for the submission of reports by the IO and inquiry officer under ss 3(3) and 5(4) of the Act. Both sections provide that the reports shall be submitted within such period 'as may be prescribed by the Minister'. It was argued that this should be treated as mandatory and that the Minister must prescribe the periods by regulations. The Supreme Court comprising Tan Sri Datuk Gunn Chit Tuan CJ (Malaya), Tan Sri Dato' Mohd Eusoff bin Chin, SCJ (as His Lordship then was), and Datuk Wira Wan Yahya bin Pawan Teh dismissed the appeal. His Lordship Mohd Eusoff bin Chin, SCJ articulately explained in his written judgment the reason Parliament leaves the discretion of the Minister to fix the period for the submission of reports by the IO and the inquiry officer:

> It will be seen that Parliament has fixed the time periods under s 3(2) of the Act, but leaves it entirely to the Minister to fix the period within which the report is to be submitted under ss 3(3) and 5(4) of the Act. We are quite appreciative of the reasons

why Parliament leaves it to the discretion of the Minister to fix the period. *The Minister has to take into consideration the amount of work and time which is taken up by the police and the inquiry officer to complete their investigation and inquiry. A simple and straight forward case may take a few days to complete while a complicated one may take longer.*

If the Minister fixes a time period within which the police investigating officer is to submit his report under s 3(3) or the inquiry officer under s 5(4) of the Act, that period may not be sufficient where the case will involve lengthy investigation or inquiry and this may result in the reports not being complete in the sense that matters which ought to be investigated or inquired into are left out. This will impose difficulty on the Minister to act under s 6(1) of the Act, when deciding to make or not to make the detention order.

The time may come when the Minister, through his experience in dealing with this matter, can positively assess what should be the time period within which the police investigating officer or the inquiry officer can certainly complete his report, and until the Minister can come to that conclusion he should not fix the time by exercising his powers under ss 3(3) or 5(4) of the Act. *We are of the view that for the reasons given, the words 'as may be prescribed by the Minister' found in both these sections ought to be treated as conferring a power to prescribe, exercisable at his discretion and not mandatory. The fact that no period has been prescribed by the Minister within which the reports are to be submitted by the investigating officer under s 3(3) or by the inquiry officer under s 5(4) of the Act does not vitiate the process leading to the detention order being made by the Minister. (Emphasis added.)*

[60] The Supreme Court in the case of *Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Liau Nyun Fui* [1991] 1 MLJ 350; [1991] 1 CLJ Rep 458 SC articulated that the burden lies on the person who challenges to prove that the duty or obligation has not been performed with all convenient speed and what constitutes convenient speed would depend on the circumstances of each case:

In order to construe the purport and effect of s 2(ii) it is essential that consideration be given to the decision of this Court in *Phua Hing Lai v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1990] 1 MLJ 173; [1990] 1 CLJ Rep 238, where the Chief Justice, Malaya delivering the judgment of the court had this to say:

Section 3 of the Enactment provides for the implementation of an order made under s 2(ii). For convenience the whole of s 3(i) and 3(ii) are reproduced below:

3(i) When any such order as is referred to in s 2(ii) or s 2A has been made with reference to any person, he shall be taken before the officer-in-charge of the prison in which he is detained and the officer-in-charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.

(ii) As soon as may be after action has been taken under sub-s (1), the officer-in-charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the Schedule to any Police

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> Officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.

It can immediately be observed that there is no time frame given in s 3(i) of the Enactment. Since no time is prescribed then according to s 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed.

There is however a time frame given by s 3(ii) of the Enactment imposed by the words 'as soon as may be' after action has been taken under sub-s (i) appearing in that subsection. The words 'as soon as may be' means as nearly as may be reasonable in the circumstances of the case. See also *Aminah v Superintendent of Prison, Pengkalan Chepa, Kelantan* [1968] 1 MLJ 92.

Whoever caused the delay must explain the delay; and it is for the court to decide whether the delay is reasonable under the circumstances.

Turning to the present case, it seems clear that a time frame is not prescribed under s 2(ii) of the Enactment and the Timbalan Menteri cannot therefore be said to be imposed with an obligation to make a restriction order within a specified time. The word 'thereafter' used in sub-s (ii) of the Enactment clearly connotes that the Timbalan Menteri may make a restriction order 'thereafter', that is, some time after making the order of arrest and detention, after such further enquiry he may deem necessary.

Two distinct situations would therefore arise where a restriction order is issued and that is:

(1) after a further enquiry (if further enquiry is deemed necessary); and

(2) after no further enquiry is deemed necessary.

In the light of the judgment in *Phua Hing Lei*'s case the position in law seems to be that when no time frame is prescribed then anything that shall be done under s 2(ii) shall be done with all convenient speed. Accordingly in respect of situation (l), the further enquiry and the issue of the restriction order shall be effected with all convenient speed. What constitutes convenient speed would depend on the circumstances of each case. In respect of situation (2), where the Timbalan Menteri does not deem it necessary for any further enquiry he ought to proceed thereafter, that is, after the detention, to make the restriction order with all convenient speed.

The correct test to be applied therefore is not on the basis of unreasonable delay but convenient speed.

[61] In this appeal before us, the respondent had explained through the affidavits that the procedures as prescribed had been complied with and that there was no delay. The total period of 35 days taken to conduct the investigation, inquiry, and submission of the report to the Minister is within the prescribed period of 60 days. The respondent gave credible reasons for the period taken to conduct the investigation and inquiry.

Request for the recorded statement by the inquiry officer from the Minister/Deputy Minister rejected by the Ketua Setiausaha Bahagian Keselamatan, Kementerian Dalam Negeri

[62] Learned counsel for the appellant argued in the submission that the request for the recorded statement by the inquiry officer from the Minister/Deputy Minister was rejected by the Ketua Setiausaha Bahagian Keselamatan, Kementerian Dalam Negeri. The IO, Fazeedah in her affidavit stated that the appellant was never asked to sign any documents when the physical examination was conducted and that she did not record or took any recorded statement from the appellant:

> 16. Merujuk semula kepada perenggan 7, 9, 19 dan 20 dalam afidavit pemohon, saya menafikan dakwaan pemohon tersebut dan sesungguhnya menegaskan bahawa pemohon *tidak pernah diarahkan untuk mengangkat sumpah sebelum siasatan fizikal dijalankan terhadap pemohon. Saya juga tidak pernah meminta pemohon untuk menandatangani apa-apa dokumen sama ada sebelum, semasa ataupun selepas siasatan fizikal dijalankan terhadap pemohon. Sesungguhnya dakwaan-dakwaan pemohon tersebut tidak pernah berlaku memandangkan saya tidak pernah merekod ataupun mengambil rakaman percakapan pemohon, tetapi saya telah mengambil keterangan pemohon secara lisan berdasarkan budibicara yang diperuntukkan di bawah Akta tersebut bagi tujuan penyediaan laporan di bawah seksyen 5(4) Akta tersebut.* Saya menegaskan bahawa segala keperluan undang-undang mengenai siasatan fizikal di bawah seksyen 5 Akta tersebut telah dipatuhi. (Emphasis added.)

Given that the IO did not record any statement from the appellant, the issue of providing the same to the appellant does not arise.

[63] What is pertinent is that, there is no requirement under the Act for recorded statements as alleged by the appellant. The Supreme Court in *Lee Kew Sang v Timbalan Menteri Dalam Negeri & Ors* [2005] MLJU 667; [2005] 3 CLJ 914 emphasised the importance to read and consider the provisions of the law and the rules that lay down the procedural requirements:

> To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the courts to create procedural requirements because it is not the function of the courts to make laws or rules. If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non-compliance.
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> Coming back to present case, both the grounds forwarded are clearly not within the ambit of the term 'procedural non-compliance.' There does not appear to be any provision in the law or the rules, neither were we shown such a provision, that requires the Minister to consider whether criminal prosecution ought to be taken against the appellant or that the order must be made within a certain period from the date of the alleged criminal acts. *There being no such procedural requirement, there can never be non-compliance thereof. In other words, the grounds are not such that could*

A *be relied on in an application for habeas corpus by virtue of the provisions of ss 7C(1) and 7D(c) of the Ordinance. On this ground alone, the application should have been dismissed*. (Emphasis added.)

B **[64]** The arguments canvassed by learned counsel for the appellant is clearly not within the ambit of the term 'procedural non-compliance'. Furthermore, there is no provision in the Act itself requiring the IO to take any statement from the appellant.

C **[65]** This court *L Rajanderan a/l R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2018] supp MLJ 393; [2010] 7 CLJ 653 held that if the statute requires an act to be a condition precedent to the making of a detention order can a valid complaint be made against that detention:

D [8] The recent decision of this court in *Lim Weng Jeng v Timbalan Menteri Keselamatan Dalam Negeri Malaysia & Ors* [2009] 1 MLJ 445; [2009] 1 CLJ 686, a case concerning a detention order under s 4(1) of the POPOC, also needs a mention. In that case, the complaint was against the refusal of the advisory board (due to the short notice), to issue summons to witnesses required by the appellant in the representation proceedings before it, pursuant to s 9 of the POPOC. The
E Federal Court held that s 9 is not a mandatory procedural requirement, and that the failure of the advisory board to adhere to it would not subject the detention order to a judicial review.

[9] The cases referred to above illustrate the principles upon which the courts will consider in allowing for judicial review on an executive detention order. It may be
F stated this way. A writ of habeas corpus must be directed only against the current detention order even if the earlier arrest of the detainee is irregular. The court is also not concerned with the vagueness, sufficiency or relevancy of the grounds of detention which is the sphere of the subjective exercise of the Minister's discretion under the various executive detention legislations unless mala fide on his part is
G shown. (see *Karam Singh v Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia* [1969] 2 MLJ 129; [1969] 1 LNS 65, see also *Minister of Home Affairs, Malaysia & Anor v Karpal Singh* [1988] 3 MLJ 29). Any questions on the legality or propriety of the arrest or detention of a detainee at the investigation stage is not a relevant consideration nor is it a pre-condition to the order of detention of
H the Minister.

[10] Only when statute requires an act to be a condition precedent to the making of a detention order can a valid complaint be made against that detention.

I **[66]** We are, therefore, of the view there is no requirement under the Act for recorded statements and we are satisfied with the explanation given in the affidavit that no written recorded statement was taken.

CONCLUSION

[67] For all these reasons stated above, it is our view that the appeal should be dismissed. My learned sister, Zabariah Mohd FCJ has read this judgment in draft and concurs with the reasons given and the conclusions reached, to form the majority judgment of this court.

Appeal dismissed.

Reported by Nabilah Syahida Abdullah Salleh